

DEC 30 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY L. HARGIS,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Respondents - Appellees.

No. 04-55257

D.C. No. CV-03-01146-DOC

MEMORANDUM^{*}

UNITED STATES OF AMERICA,

Petitioner - Appellee,

v.

ANTHONY L. HARGIS,

Respondent - Appellant.

No. 04-55258

D.C. No. CV-03-01424-DOC

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

Submitted November 15, 2005**
Pasadena, California

Before: WARDLAW and PAEZ, Circuit Judges, and SINGLETON***, District Court Judge.

Anthony Hargis appeals the district court's order to enforce an Internal Revenue Service ("IRS") summons and its denial of his petition to quash a third-party IRS summons. Hargis argues that the district court abused its discretion in failing to hold a limited evidentiary hearing into the bad faith of the IRS, and that the district court's orders of enforcement were clearly erroneous. We have

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable James K. Singleton, Senior United States District Judge for the District of Alaska, sitting by designation.

jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court's rulings.¹

The Supreme Court has construed broadly the IRS's power to issue summonses under 26 U.S.C. § 7602. *See, e.g., United States v. Euge*, 444 U.S. 707, 714-15 (1980). This circuit is in accord. *See, e.g., United States v. Jose*, 131 F.3d 1325, 1327 (9th Cir. 1997) (en banc) ("Section 7602 grants the Secretary or his delegate wide latitude to summons information necessary for investigative purposes.").

United States v. Powell, 379 U.S. 48 (1964), established four criteria the IRS must satisfy to obtain enforcement of a summons. The IRS must demonstrate that "the investigation will be conducted pursuant to a legitimate purpose," *id.* at 57; "the inquiry may be relevant to the purpose," *id.*; "the information sought is not already within the Commissioner's possession," *id.* at 57-58; and "the

¹The Government argues that Hargis waived any objections to the magistrate's report and recommendation by failing to file timely objections, as required by 28 U.S.C. § 636(b)(1). Although the district court docket sheets for the present cases do not reflect that Hargis filed objections, this discrepancy apparently was the result of clerical error. The Excerpts of Record contain a document titled "Hargis, Steinhardt, and Strough's Objection to Magistrate's Report & Recommendation on Petition To Quash 3rd Party Summons and Opposition to Enforcement of 1st Party Summonses," which was file-stamped received in case numbers CV-03-1146 and CV-03-1424 by the district court on December 9, 2003. Upon remand, we instruct the district court, pursuant to Fed. R. App. P. 10(e)(2)(B), to correct the docket records.

administrative steps required by the Code have been followed,” *id.* at 58.

Additionally, “the summons must be issued before the Service recommends to the Department of Justice that a criminal prosecution, which reasonably would relate to the subject matter of the summons, be undertaken.” *United States v. LaSalle Nat’l Bank*, 437 U.S. 298, 318 (1978).

We require little evidence from the IRS to satisfy the *Powell* standard.

“Assertions by affidavit of the investigating agent that the requirements are satisfied are sufficient” to establish a prima facie case for enforcement. *Liberty Fin. Servs. v. United States*, 778 F.2d 1390, 1392 (9th Cir. 1985) (per curiam). Once the IRS has made this “minimal” showing, “[t]he burden then shifts to the taxpayer to show an abuse of process, *e.g.*, that the summons was issued in bad faith for an improper purpose. The burden is a heavy one. The taxpayer must allege specific facts and evidence to support his allegations.” *Id.* (citations omitted).

The two declarations filed in the district court by IRS Agent Hawkins satisfy the *Powell* requirements. Through these declarations, the IRS established a prima facie case that the summonses should be enforced. The “heavy burden” then shifted to Hargis to demonstrate that the IRS was not acting in good faith. Hargis argues that he was entitled to a limited evidentiary hearing to develop facts in support of his claim of bad faith. But a taxpayer is not automatically entitled to an

evidentiary hearing. Hargis must “be able to provide a minimal amount of evidence just to entitle him or her to an evidentiary hearing.” *United States v. Stuckey*, 646 F.2d 1369, 1372 (9th Cir. 1981). “To make a showing of bad faith sufficient to trigger a limited evidentiary hearing, a taxpayer must ‘do more than *allege* an improper purpose’; ‘some *evidence*’ must be introduced to support the allegations made.” *United States v. Samuels, Kramer & Co.*, 712 F.2d 1342, 1347 (9th Cir. 1983) (quoting *United States v. Church of Scientology*, 520 F.2d 818, 824 (9th Cir. 1975)). “[S]uch a showing requires that the party provide specific facts and evidence, and not mere ‘conclusory allegations,’ that the summons was issued in bad faith.” *United States v. Tanoue*, 94 F.3d 1342, 1346 (9th Cir. 1996) (quoting *Church of Scientology*, 520 F.2d at 824-25).

Hargis offered no specific facts or evidence of bad faith that entitled him to a limited evidentiary hearing, and the district court did not abuse its discretion in denying him one. *See Stuckey*, 646 F.2d at 1373 (“The district court has discretionary authority to limit the scope of an evidentiary hearing and to deny discovery in a summons enforcement proceeding.”). Further, because Hawkins’s declarations satisfied the *Powell* requirements, and because Hargis offered no evidence of bad faith, the district court did not commit clear error in enforcing the

summonses. *See United States v. Derr*, 968 F.2d 943, 945 (9th Cir. 1992) (stating that we review a district court's orders to enforce IRS summonses for clear error).

AFFIRMED and **REMANDED** for correction of the docket.